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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,052	11/03/2003	Charles A. Byrne	MAMMOTH-44436	5529
26252	7590	03/03/2009	EXAMINER	
KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367			DANIELS, MATTHEW J	
ART UNIT	PAPER NUMBER		1791	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/701,052	<b>Applicant(s)</b> BYRNE, CHARLES A.
	<b>Examiner</b> MATTHEW J. DANIELS	<b>Art Unit</b> 1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 November 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,7-14,16-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,7-14,16-25 and 27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/06)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. **Claims 8, 18, and 23** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While certain configurations of the claimed invention envisioned a treat placed in the cavity of the chew toy (Fig. 28, 29), there is no indication in the specification that Applicants had possession or envisioned the use of a tire with a treat placed therein.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

#### **Rejections over Boyer**

2. **Claim 1** is rejected under 35 U.S.C. 103(a) as obvious over Boyer (US 2943969). **As to Claim 1**, Boyer teaches a method for manufacturing an article which could be used as an animal

chew toy comprising cutting first and second layers of rubber (right side of Fig. 1), which may be tire rubber (1:17), and a nylon fiber mesh (2:30-33) in a general shape and size of the article, placed between the layers of rubber (Fig. 1), and molding the sheets of rubber and synthetic fiber mesh in a mold (2:53-71). Boyer teaches cutting of the rubber and reinforcement when the reinforcement has already been placed between the sheets of rubber (2:10-15). However, it would have been obvious to also place a cut sheet of reinforcement between two cut rubber layers since doing so merely involves a rearrangement in the order of performing the steps of placing and cutting. Boyer teaches one "mold" (2:55), however, it is submitted that item 20 or the repaired article itself acts as a second opposing mold which participates in forming the reinforced rubber into a plate.

3. **Claim 3** is rejected under 35 U.S.C. 103(a) as obvious over Boyer (US 2943969) in view of Kraus (US 2984281). Boyer teaches the subject matter of Claim 1 above under 35 USC 103(a). **As to Claim 14**, Boyer is silent to the carbon black in the rubber. However, Kraus teaches that it is known to incorporate carbon black in rubber material (1:25). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Kraus into that of Boyer since carbon black gives tires their color, and because Boyer provides an article meant to be used to repair tires (1:17), therefore one would have incorporated carbon black to provide a tire patch matching the tire.

4. **Claims 14 and 16** are rejected under 35 U.S.C. 103(a) as obvious over Boyer (US 2943969) in view of Kraus (US 2984281). **As to Claim 14**, Boyer teaches a method for

manufacturing an article which could be used as an animal chew toy comprising cutting first and second layers of rubber (right side of Fig. 1), which may be tire rubber (1:17) which is inherently synthetic or natural, and a nylon fiber mesh (2:30-33) in a general shape and size of the article, placed between the layers of rubber (Fig. 1) providing an article devoid , and molding the sheets of rubber and synthetic fiber mesh in a mold (2:53-71). Boyer teaches cutting of the rubber and reinforcement when the reinforcement has already been placed between the sheets of rubber (2:10-15). However, it would have been obvious to also place a cut sheet of reinforcement between two cut rubber layers since doing so merely involves a rearrangement in the order of performing the steps of placing and cutting. Boyer teaches one "mold" (2:55), however, it is submitted that item 20 or the repaired article itself acts as a second opposing mold which participates in forming the reinforced rubber into a plate.

Boyer is silent to the carbon black in the rubber. However, Kraus teaches that it is known to incorporate carbon black in rubber material (1:25). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Kraus into that of Boyer since carbon black gives tires their color, and because Boyer provides an article meant to be used to repair tires (1:17), therefore one would have incorporated carbon black to provide a tire patch matching the tire. **As to Claim 16**, Boyer teaches nylon fibers (2:31).

**Rejections over Kraus, Riehl, and Wallace**

5.      **Claims 1, 3, 13, 14, 16, 21, and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US

2782830). **As to Claims 1, 14, and 21,** Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first (23) and second layers (24) of rubber material which may contain carbon black (1:25) formed in a general shape and size of the animal chew toy (2:20);

molding the sheets of rubber into an article which could be used as an animal chew toy (2:21-35);

compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31) to mold the materials into a tire configuration having a tread design, sidewalls, and a U-shaped cross section (Figures).

Kraus does not explicitly teach (a) the use of a floss material comprising a mesh molded between the two sheets, (b) “cut” tire rubber material and “cut” synthetic fiber mesh.

However, Riehl teaches that it is known to provide a tread portion which is cut and spliced (6:71-73), and therefore it is submitted that cutting of rubber material to form the two sheets of rubber required by Kraus would have been obvious. Wallace teaches that it is known to provide a bias-cut reinforcing material between layers in a tire (2:28-53).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Riehl and Wallace into that of Kraus because (a) Kraus teaches or suggests a tread portion, and Riehl provides a conventional for manufacturing and assembling the tread, and (b) reinforcement material would have obviously been desirable and applicable in the Kraus process since it would help prolong tire lifetime and reduce blowouts.

**As to Claim 3,** this claim reads on the tire of Kraus (1:25). **As to Claim 13 and 27,** Kraus clearly provides a tire which would have treads (Figures), and the claimed sidewalls and U-shaped cross section. Selection of a different size tire would have been obvious to the ordinary artisan. **As to Claim 16,** see Wallace, col. 2, line 29.

6. **Claims 7, 17 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Spross (USPN 1596071). Kraus, Riehl, and Wallace teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 7, 17 and 22,** Kraus is silent to the rope. However, it is conventional to tie a rope to a tire. This type of apparatus is used for swings, and is demonstrated at least by Spross (Figures and Page 1, line 55). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Spross into that of Kraus because Spross explicitly suggests the method for use with tires (Page 1, line 56).

7. **Claims 9, 10, 19 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Eby (USPN 3728749). Kraus, Riehl, and Wallace teach the subject matter of Claims 1, 14 and 21 above under 35 USC 103(a). **As to Claims 9, 10, 19 and 24,** Kraus is silent to the buoyant foam insert. However, Eby teaches that it is conventional to provide foam in a tire for use as a tire float (entire document). It is submitted that it is inherent that the foam is closed cell in order that it provides a floating effect, according to Eby's requirement. Although Eby appears

to disclose foaming in the tire, it would have also been obvious to rearrange the order of these process steps by prefabricating the insert and placing it in the tire to provide the same effect. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Eby into that of Kraus in order to provide a use for old tires in order to avoid disposal costs and architectural eyesores in the form of junkyards.

8.       **Claims 9-11, 19 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Ogura (USPN 4098214). Kraus, Riehl, and Wallace teach the subject matter of Claims 1, 14 and 21 above under 35 USC 103(a). **As to Claims 9-11, 19 and 24**, Kraus is silent to the buoyant foam insert. However, Ogura teaches that it is conventional to provide closed cell foam in a tire for use as a tire float (2:26). The porous material is packed into the tire (4:9-10). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Ogura into that of Kraus in order to provide a use for old tires in order to avoid disposal costs and disposal in landfills.

9.       **Claims 12, 20 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Riehl (US 3062696) and Wallace (US 2782830), and further in view of Hartnett (US 2002/0111412). Kraus, Riehl, and Wallace teach the subject matter of Claims 14 and 21 above under 35 USC 103(a). **As to Claims 20 and 25**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. In the alternative, however, Hartnett teaches that it is known to provide an odor masking agent,

such as vanilla extract, to a mixture to be molded and vulcanized (Abstract). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Hartnett into that of Kraus because Hartnett specifically suggests the method for use with vulcanizable elastomer rubbers ([0016]), and doing so would improve the scent of the article of Kraus, which is comprised of a vulcanizable elastomeric rubber.

**Rejections over Rodman**

10. **Claims 1 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodman (US 2,795,524). **As to Claims 1 and 14**, Rodman teaches that a sheet of nylon fibers (6:67) may be placed between two layers of acrylonitrile butadiene (2:14-18), interpreted to be a rubber, which may contain carbon black (2:55), and consolidating using heat and pressure (4:52-54) using opposed mold members such as heated rolls or heated plates (5:10-15), to form articles having the shape of flying disks such as gaskets (6:32). Although Rodman does not specifically teach cutting the material into the required shape, it would have been obvious to provide the materials of Rodman in a cut configuration to conform to the desired shape.

**Rejections over Smith in view of Rodman**

11. **Claims 1, 3, 8-10, 14, 16 18, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 4,133,296) in view of Rodman (US 2,795,524). **As to Claims 1 and 14**, Smith teaches a toy for pets in which an elongated generally cylindrical retriever configuration is provided (Fig. 3) with treats or balls (treats or buoyant inserts) are placed inside the retriever (Figs. 3 and 6). Smith is silent to the rubber material mixed with carbon black, and

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the floss placed between two layers of rubber material. However, Rodman teaches that a sheet of nylon fibers (6:67) may be placed between two layers of acrylonitrile butadiene (2:14-18), interpreted to be a rubber, which may contain carbon black (2:55), and consolidating using heat and pressure (4:52-54) using opposed mold members such as heated rolls or heated plates (5:10-15), to form material or articles having many diverse uses (col. 6). Although Rodman does not specifically teach cutting the material into the required shape, it would have been obvious to provide the materials of Rodman in a cut configuration to produce discontinuous articles.

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Rodman into that of Smith since (a) Smith suggests canvas (1:59-60), and Rodman provides a material suggested as a substitute for canvas (6:23), or (b) one of ordinary skill in the art would have viewed the material of Rodman as a substitutable material for the canvas of Smith, or (c) one of ordinary skill in the art would have recognized that the use of the resilient material of Rodman would improve the product of Smith by making it more resistant to damage during use.

**As to Claims 3 and 16**, Rodman provides nylon fibers (6:47). **As to Claims 8-10, 18, and 19**, Smith teaches that treats or balls (buoyant) are placed in the device (2:28-42).

*Response to Arguments*

12. Applicant's arguments filed 19 November 2008 have been fully considered but they are not persuasive or are moot in view of the new grounds of rejection above. The arguments appear to be on the grounds that:

(a) only one of the references is directed to a chew toy, that the secondary references are not analogous, and that the invention has not been considered as a whole.

(b) Boyer provides a sandwich strip which could not be used as a chew toy and provides only one mold.

(c) Oswald provides a continuous cord strand in a zig-zag pattern, but does not provide pre-cut sheets or rubber or mesh. Kraus and Oswald also teach adhering a part which already has treads formed thereon. Neither Kraus nor Oswald provide a flying disc, bone, or retriever configuration.

(d) Spross, Eby, Ogura, and Hartnett provide divergent teachings which are not analogous and where there is no motivation or suggestion to combine with Krause or Oswald.

(e) Applicant fails to see how Riehl applies whatsoever to the present invention. Wallace and Krause are not directed whatsoever to an animal chew toy. The fact that Wallace teaches bias-cut reinforcing material is of no consequence to the present invention since Wallace teaches that portions of the tire are already pre-made, for example, which are not bias-cut and do not constitute reinforcing material.

(f) Kahnweiler and Sonnett are not analogous, And there is no discussion in the Kahnweiler process to mold under heat and pressure to form the toy.

(g) There is no teaching, suggestion, or motivation to combine the references, and the rejections over Kahnweiler and Sonnett are based on hindsight.

(h) there is no teaching or suggestion that the mouse of Kahnweiler would be buoyant.

13. These arguments are not persuasive for the following reasons:

(a) When the claimed invention is a tire, its intended use does not distinguish the claimed invention from other tires. Considering the claimed process of making a tire as a whole, which is intended to be used as an animal toy, it is submitted that the claimed invention is nevertheless obvious for the reasons set forth above over conventional processes of making a tire, such as that of Kraus. The independent claims do not appear to point to any feature particular to animal toys which is not known as a conventional step in manufacturing tires.

(b) It is unclear how the Boyer device is distinguishable from a disk. Notably, the Boyer device contains a nylon fabric not distinguishable from the fabric set forth in the instant claims.

(c) Rejections over Oswald have been withdrawn.

(d) The Examiner maintains that the cited references are valid for the teachings relied upon. Other rationale for combining references (beyond the TSM test) are no longer foreclosed, and the arguments do not appear to particularly argue against the stated rationale.

(e) Riehl and Wallace demonstrate merely that cutting of rubber or reinforcement materials for use in a tire are conventional. Since it is unlikely that the Kraus tire could be formed without cutting of the rubber material which comprise the Kraus tire, it may be that the cutting relied upon in the Riehl process is already inherent in the Kraus process. Applicant's argument that some portions of the Wallace may be pre-made does not demonstrate why the use of a nylon fabric in the tire of Kraus is asserted to be nonobvious.

(f,g,h) These rejections have been withdrawn in favor of others set forth above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew J. Daniels/  
Primary Examiner, Art Unit 1791  
2/28/09